

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

JUN 24 1993

IN THE MATTER OF:

DOCKET NUMBER: 97-02057

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His records be corrected to reflect he filed a timely election to change his Survivor Benefit Plan (SBP) beneficiary from his former spouse to his current spouse.

APPLICANT CONTENDS THAT:

He divorced his former spouse on 11 December 1992 and married his current spouse on 29 May 1993. When he asked to change the SBP beneficiary to his present spouse, he was informed that he only had one year to make the change. Applicant states he had no knowledge of that stipulation. He contends he was not able to attend a retirement briefing due to his unit carrying a heavy seven-day, 24 hour activity involving Desert Shield/Desert Storm but, obtained an informal interview which he considered the "briefing". Applicant states that when he asked if he could make the change of SBP if he divorced his present wife and remarried her the next day, he was told he could not do that. However, he is willing to do this to fulfill the requirement if need be.

In support of his application, he submits a copy of his certificate of marriage to his current spouse, dated 29 May 1993; an AF Form 1581, Survivor Benefit Plan Election Statement for Former Spouse Coverage, dated 9 August 1993, electing SBP coverage for former spouse and child; and, decree of divorce from his former spouse.

Applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

The relevant facts pertaining to this application, extracted from the applicant's military records, are contained in the letter prepared by the appropriate office of the Air Force, Office of

Primary Responsibility (OPR). Accordingly, there is no need to recite these facts in this Record of Proceedings.

AIR FORCE EVALUATION:

The Chief, Retiree Services Branch, HQ AFPC/DPPT, states that although the divorce decree (from the former spouse) was silent on the SBP, the member voluntarily converted his coverage to former spouse and child. The applicant married his current spouse on 29 May 1993, but he did not request coverage be established on her behalf. Consequently, former spouse and child coverage remain in effect.

There is no evidence that the applicant attempted to convert his coverage until after the time limit had expired, and there is no provision in law that allows him to do so now. Although applicant claims his ex-wife is receiving his full retirement check, the Defense Finance and Accounting Service - Cleveland Center (DFAS-CL) records indicate there is no garnishment order or former spouse division of retired pay in effect. Applicant's belief that if he divorces and remarries his present spouse, the one-year eligibility period would be reinstated, is not accurate. This would not qualify him to elect SBP coverage for his current spouse. To approve relief would be inequitable and would provide the applicant an opportunity not afforded to other retirees in similar circumstances. There is no evidence of Air Force error or injustice. They recommend the applicant's request be denied.

A copy of the Air Force evaluation is attached at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Applicant states, in summary, that selection of SBP coverage was accomplished just after his arrival at Zaragoza, after being released from the Psychiatric Ward at Wiesbaden, Germany where he spent several months after recovery from a suicide attempt. At the time he signed the paperwork, he was still under the influence of drugs to calm his nerves. He had no idea what he was signing, nor cared to know at the time.

At the time of his divorce from his former spouse, he had no idea what SBP was, nor that he had converted his coverage to SBP coverage. At that time he still had no clue as to his future. When he married his current spouse, he processed for an identification (ID) card and all other necessary paperwork and he was under the impression that all the paperwork presented for his signature included a change of what should have included the SBP. Had he been briefed by the Puerto Rico Air National Guard Consolidated Base Personnel Office (CBPO) regarding SBP and its

importance, he would not have hesitated to select SBP for his present spouse.

A copy of the applicant's response, with attachments, is attached at Exhibit E.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.
3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. After a thorough review of the evidence of record and applicant's submission, we are not persuaded that his records should be corrected to reflect that he filed a timely election to change his Survivor Benefit Plan (SBP) beneficiary from his former spouse to his current spouse. His contentions are duly noted; however, we do not find these assertions, in and by themselves, sufficiently persuasive to override the rationale provided by the Air Force. We therefore agree with the recommendations of the Air Force and adopt the rationale expressed as the basis for our decision that the applicant has failed to sustain his burden that he has suffered either an error or an injustice. Therefore, we find no compelling basis to recommend granting the relief sought.
4. However, Public Law (PL) 105-85, SEC. 642. (effective 17 May 1998) provides an opportunity for retirees a time in which change in survivor benefit coverage from former spouse to spouse may be made. For further information, applicant should contact the Retiree Services Branch (AFPC/DPPT) at 1-800-531-7502.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 21 May 1998, under the provisions of AFI 36-2603.

Mr. Henry C. Saunders, Panel Chair
Mrs. Barbara A. Westgate, Member
Ms. Ann L. Heidig, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 30 Jun 97, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, HQ AFPC/DPPTR, dated 11 Dec 97.
- Exhibit D. Letter, AFBCMR, dated 29 Dec 97.
- Exhibit E. Applicant's Letter., undated.



HENRY C. SAUNDERS
Panel Chair